

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 403 Derelict Motor Vehicles and Mobile Homes

**SPONSOR(S):** Nehr and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 792

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Roads, Bridges & Ports Policy Committee		Brown	Miller
2)	Civil Justice & Courts Policy Committee			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

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**SUMMARY ANALYSIS**

HB 403 amends s. 319.30, F.S., regarding derelict vehicles and mobile homes. It clarifies the requirements for destroying or dismantling motor vehicle or mobile homes, expands the definition of “certificate of title” to include titles from other states; and clarifies that a 10-year provision to determine whether a vehicle is derelict begins with the model year of the vehicle. The bill also redefines “derelict motor vehicle certificate” to clarify that once such a certificate is issued, the motor vehicle may only be dismantled or converted to scrap metal.

HB 403 makes allowances for a “seller” to apply for a derelict motor vehicle certificate, in cases where the owner is not able to apply, and requires applications to include a personal identification number.

The bill creates new prohibitions for persons engaged in the business of recovering, storing, or towing vehicles under s. 713.78, F.S. Entities in this industry may not (i) claim a lien for labor or services on a motor vehicle, (ii) claim that a motor vehicle has remained on their premises after a tenancy has terminated, or (iii) use a derelict motor vehicle certificate application in order to transport a vehicle without obtaining the title (or a certificate of destruction) for that vehicle. A person violating these provisions commits a third degree felony.

The bill has an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### *Present Situation*

Section 319.30, F.S., requires that when a motor vehicle or mobile home is to be dismantled, destroyed, or altered so significantly as to no longer be the motor vehicle or mobile home described in the certificate of title, the owner must surrender the title to DHSMV for cancellation. Violation of the requirement constitutes a second degree misdemeanor.

Currently, when a vehicle is sold to a salvage dealer, the statute requires that a vehicle must be accompanied by the:

- certificate of title,
- salvage certificate of title, or a
- vehicle certificate of destruction issued by DHSMV.

Alternatively, if the title has been surrendered to DHSMV, a "derelict motor vehicle certificate" from the vehicle owner attesting to the surrender of the title must accompany the vehicle.<sup>1</sup> Salvage motor vehicle dealers are required to record the name, address, and personal identification card number of any person delivering motor vehicles, derelicts and major parts.<sup>2</sup> Similarly, when a motor vehicle, derelict, or major part is purchased by a secondary metals recycler,<sup>3</sup> the recycler must record the name, address, and personal identification card number of any person delivering the vehicle, derelict or part, and must obtain from the seller:

- valid certificate of title,
- valid certificate of destruction issued by DHSMV, or
- If neither of the above is available, a derelict motor vehicle certificate signed by the seller stating that the certificate of title was returned to DHSMV.

Existing law provides a process for towing and storage companies to dispose of or dismantle vehicles they lawfully possess, after a certain period of time. Section 713.78(11)(a), F.S., provides that any person regularly engaged in the business of recovering, towing, or storing vehicles or vessels who legally possesses a vehicle may apply for a certificate of destruction from the county tax collector. The

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<sup>1</sup> Section 319.30(2)(c)2., F.S.

<sup>2</sup> Section 319.30 (6), F.S.

<sup>3</sup> S. 538.18 (8) F.S. defines "secondary metals recycler" as an individual who is engaged, from a fixed location or otherwise, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.

company must first attempt to identify the owner through the methods contained in s. 713.78(6), F.S., and wait a specified period of time, depending on the age of the vehicle.

Section 713.78(11), F.S. also provides that a certificate of destruction is re-assignable a maximum of two times before dismantling or destruction of the vehicle is required, and the certificate must accompany the vehicle when sold, in lieu of a certificate of title. The application for a certificate of destruction must include an affidavit from the applicant that it has complied with all applicable requirements and, if the vehicle is not registered in Florida, by a statement from a law enforcement officer that the vehicle or vessel is not reported stolen.

Section 713.78(2), F.S., provides that a company may claim a lien on the vehicle for reasonable towing and storage services, but may not charge storing fees if the storage lasts less than 6 hours. Subsection (3) provides that companies may not claim a lien for fees or charges related to merely immobilizing a vehicle with a boot or similar device.

### *Proposed Changes*

HB 403 amends s. 319.30, F.S., to clarify and expand several derelict and salvage vehicle issues.

Specifically, the bill amends s. 319.30(1)(c), F.S., revising the definition of “certificate of title” to include a title issued by an authorized motor vehicle department from a state other than Florida. This provision clarifies that DHSMV accepts out-of-state titles as legitimate certificates of title. This bill also amends s. 319.30(1)(e), F.S., to clarify that the model year of the vehicle counts as “year one” when defining a derelict motor vehicle.

HB 403 defines the term “seller,” and applies the term throughout s. 319.30, F.S., so that, in addition to the owner of record of a derelict motor vehicle, a person who has “physical possession and responsibility for a derelict motor vehicle” may also apply for a derelict motor vehicle certificate. The bill also amends s. 319.30(1)(f), F.S., to clarify that a “derelict motor vehicle certificate” is the document issued by DHSMV after an owner or seller completes a derelict motor vehicle certificate application.

HB 403 clarifies several sections of the statute regarding title transfers, by explicitly requiring certificates of title transferred in accordance with this statute also conform to the endorsement provisions in s. 319.22, F.S.<sup>4</sup>

The bill amends portions of s. 319.30(2) and (7), F.S., to require that a derelict motor vehicle certificate application must be completed by the seller or owner if the title certificate, salvage title certificate, or certificate of destruction is not available. It further details the information that is required on the application, which includes a copy of the seller’s or owner’s personal identification card, when that identification card is something other than a Florida driver license or Florida identification card. Failure to obtain this personal identification information is penalized as a third-degree felony.

HB 403 creates a new s. 319.30(8)(f), F.S., prohibiting any person engaged in the business of recovering, towing or storing vehicles pursuant to s. 713.78, F.S., from:

- claiming a lien for performing labor or services pursuant to s. 713.58, F.S.<sup>5</sup>;
- claiming that a motor vehicle or mobile home has remained on the premises after tenancy has terminated pursuant to s. 715.104, F.S.<sup>6</sup>; or
- using a derelict motor vehicle certificate application to transport, sell, or dispose of a motor vehicle at a salvage motor vehicle dealer or a metal recycler without obtaining the title or certificate of destruction required under ss. 713.58, 715.104, or 713.78, F.S.

Violations of these prohibitions are third-degree felonies.

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<sup>4</sup> Section 319.22, F.S., contains the general endorsement requirements for all title transfers.

<sup>5</sup> Section 713.58, F.S., generally allows for liens on personal property by persons who have provide labor or services on the property.

<sup>6</sup> Section 715.104, F.S., provides a notification process for landlords in possession of former tenants’ personal property, after the tenant’s occupancy has terminated.

**B. SECTION DIRECTORY:**

**Section 1** Amends s. 319.30, F.S., defining the term "seller" and revising the definitions of the terms "certificate of title," "derelict motor vehicle," and "derelict motor vehicle certificate"; revising requirements for disposition of a motor vehicle, RV, or mobile home that is sold, transported, or delivered to a salvage motor vehicle dealer or a secondary metals recycler; requiring certificates of title to conform to specified provisions; providing for the dealer or recycler to apply to the DHSMV for a derelict motor vehicle certificate if the certificate of title, salvage certificate of title, or certificate of destruction is not available; requiring the derelict motor vehicle certificate application to be completed by the seller or owner of the motor vehicle or mobile home, the seller's or owner's authorized transporter, and the dealer or recycler; requiring certain identification information be included with the application; revising the types of documentation that a secondary metals recycler must obtain; permitting recyclers to obtain salvage certificates of title from sellers or owners as a valid method of documentation; providing that a person engaged in the business of recovering, towing, or storing vehicles may not claim certain liens, claim that certain vehicles have remained on any premises after tenancy has terminated, or use the derelict motor vehicle certificate application to transport, sell, or dispose of a motor vehicle at a salvage motor vehicle dealer or metal recycler without otherwise obtaining title to the vehicle or a certificate of destruction; and providing penalties.

**Section 2** Provides an effective date of July 1, 2010

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not yet determined a final impact. The Department of Corrections notes that because the bill creates a new penalty, it "has no data available to gauge impact of the bill on the offender and prison population."<sup>7</sup> DHSMV reports that the bill has no fiscal impact on its operations.<sup>8</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may result in cost-avoidance for those motor vehicle owners protected by the bill's criminal prohibition against vehicle liens levied improperly by certain vehicle transporters.

**D. FISCAL COMMENTS:**

None.

<sup>7</sup> *HB 403 Memorandum*, Tommy Maggitas, Office of Legislative Affairs, Department of Corrections, December 24, 2009.

<sup>8</sup> *Agency Bill Analysis – HB 403*, Department of Highway Safety and Motor Vehicles, December 7, 2009.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

N/A

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**